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BEFORE THE ARIZONA CORPORATION COMMISSION

2008 MAR 14 P 3:58

MIKE GLEASON

Chairman

WILLIAM MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

KRISTIN MAYES

Commissioner

GARY PIERCE

Commissioner

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

MAR 14 2008

DOCKETED BY

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IN THE MATTER OF THE FORMAL
COMPLAINT OF QWEST CORPORATION
AGAINST ARIZONA DIALTONE, INC. TO
ENFORCE ITS INTERCONNECTION
AGREEMENT

DOCKET NO. T-03608A-07-0694
T-01051B-07-0694

MOTION FOR PROTECTIVE ORDER

Qwest Corporation ("Qwest") hereby files its motion for protective order.

The Procedural Order issued on February 29, 2008 in this matter requires Qwest to file a substantive (non-redacted) version of Exhibit D to its Complaint no later than today, March 14, 2008. This deadline has already been extended from the first filing date ordered by the Commission, in response to Qwest's Motion for Extension of Time, filed on February 29, 2008. As Qwest explained in its Motion for Extension, the extension was required in order to give Arizona Dialtone, Inc. ("Arizona Dialtone"), and the Commission Staff ("Staff"), more time to consider the "3-way" protective order that Qwest had first proposed to the Staff on February 18. (That proposed form of protective order was attached to Qwest's Motion to Extend, filed on February 29.) Since the extension was granted by the Procedural Order issued on February 29, Arizona Dialtone has stated that it finds the proposed protective order acceptable. However, despite multiple requests and inquiries made by Qwest, the Commission Staff only today responded though counsel that it will not agree to any stipulation for an order that is not Staff's

1 "standard form."

2 There are several problems with Staff's position, including the fact that Staff's "standard
3 form," which Qwest understands is newly developed, is only a "two party" agreement, and this
4 situation demands that the protective provisions apply to information exchanged between and
5 among three entities; further, the Commission Staff's new form of agreement does not make any
6 provision for how confidential information may be entered into evidence. That will not serve in
7 this case. The most urgent problem, however, is that the Staff's response has come very late, and
8 the deadline for Qwest to file a non-redacted version of Exhibit D is today.

9 Accordingly, Qwest is today submitting directly to Administrative Law Judge Harpring a
10 sealed, confidential, not-to-be-released to the public, Schedule D. Qwest is not filing the non-
11 redacted version of Schedule D with Docket Control. This Schedule D includes billing
12 information that forms the foundation of Qwest's complaint, and has been updated and brought
13 down to February, 2008. The billing information is confidential to Qwest, as well as to Arizona
14 Dialtone, that was billed the charges. While the information at issue might not literally be carrier
15 information, as that phrase is described in 47 USC Section 222(b), because the information was
16 not "received or obtained" from the CLEC but generated by Qwest, there is no doubt that it is
17 carrier proprietary information (as that phrase is used in 47 USC Section 222(a)) and that Qwest
18 has not only a business imperative but a federal legal obligation to protect it. To that end, Qwest
19 has been trying to get the participants in this proceeding to execute a Protective Agreement that
20 would assure that the information reviewed by the participants remained confidential. As related
21 above, as of this date, Qwest and Arizona Dialtone have agreed on the wording of the Protective
22 Order and are prepared to execute a stipulation for an entry of that Protective Order. However,
23 the Staff has withheld its agreement.

24 Qwest submits herewith, attached as Exhibit A, the same form of Protective Order Qwest
25 has been proposing in this docket since February 18 and that Qwest attached to its Motion for
26 Extension of Time on February 29. Qwest believes that the Commission should proceed to act

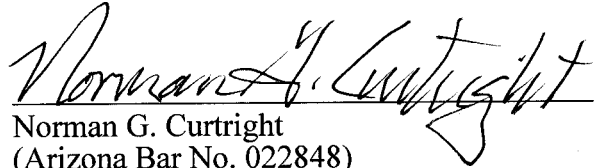
1 on this matter by approving and entering the Protective Order in the form attached, and in
2 accordance with that Order permit the confidential information to be available to parties who
3 have acknowledged the order, and available to hearing officers and commissioners. This gives
4 Staff the option to continue to refuse to sign the acknowledgment. In that event, Staff may
5 continue to participate in the proceeding, but they would not have access to the information on
6 Schedule D.

7 Qwest's proposed course of action, which avoids making the Qwest/Arizona Dialtone
8 billing information available to the general public, is reasonable. While this case involves carrier
9 billing information, rather than end user billing information, it is clear that under federal law at
10 least some types of billing information is proprietary to customers (47 U.S.C. § 222(h)(1)(B),
11 and while that information can be disclosed when "required by law" (47 U.S.C. § 222(c)(1)),
12 carriers still have an obligation "to protect" the information (47 U.S.C. § 222(a)) in the context of
13 the disclosure. Indeed, in considering end user customer proprietary network information
14 (CPNI), at least one court has held that Congress' clear intent to protect telecommunications
15 customer information means that a protective agreement should be structured so that *only* the
16 attorneys of the parties could see the information. *ICG Communications, Inc. v. Allegiance*
17 *Telecom, et al.*, 211 F.R.D. 610 (N.D.Ca. 2002) ("In light of the privacy concerns . . . there is
18 good cause for a protective order limiting the production for attorney eyes only. *Cf. Wallman v.*
19 *Tower Air*, 189 F.R.D. 566, 569 (N.D. Cal. 1999) ("Given the explicit confidentiality provisions
20 of the regulations which mandate maintenance of a passenger list, there is, in the case at bar,
21 good cause for a protective order under the civil discovery rules."). While Qwest is not asking
22 the Commission to limit access to information as narrowly as did the *ICG* Court, Qwest is asking
23 that the information not be disclosed in a manner that would allow it to be made public.

24 Qwest also attaches hereto as Exhibit B, a copy of the transmittal letter being sent to
25 Administrative Law Judge Harpring today, without the non-redacted Exhibit D.
26

1 RESPECTFULLY SUBMITTED this 14th day of March, 2008.

3 QWEST CORPORATION

4 

5 Norman G. Curtright
6 (Arizona Bar No. 022848)
7 20 E. Thomas Rd., 16th Floor
8 Phoenix, Arizona 85012
9 Tel: (602) 630-2187
Fax: (303) 383-8484
Email: norm.curtright@qwest.com

10 ORIGINAL and 13 copies hand-delivered
11 for filing this 14th day of March, 2008, to:

12 Docket Control
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
Phoenix, AZ 85007

15 Copy of the foregoing hand delivered
16 this 14th day of March, 2008, to:

17 Sarah Harpring, Administrative Law Judge
Hearing Division
18 ARIZONA CORPORATION COMMISSION
19 1200 W. Washington
Phoenix, AZ 85007

20 Armando Fimbres
Utilities Division
21 ARIZONA CORPORATION COMMISSION
22 1200 W. Washington Street
Phoenix, AZ 85007

23 Maureen A. Scott, Esq.
24 Legal Division
ARIZONA CORPORATION COMMISSION
25 1200 W. Washington Street
26 Phoenix, AZ 95007

1 Copy of the foregoing mailed
2 this 14th day of March, 2008, to:

3 Tom Bade
4 President—Arizona Dialtone, Inc.
5 115 S. Kyrene Rd, Suite 103
6 Tempe, AZ 85283

7 Glenn B. Hotchkiss, Esq.
8 Cheifetz, Iannitelli & Marcoline P.C.
9 1850 North Central Avenue, 19th Floor
10 Phoenix, Arizona 85004

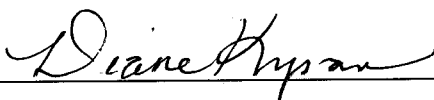
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EXHIBIT A

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MIKE GLEASON – Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE FORMAL COMPLAINT
9 OF QWEST CORPORATION AGAINST ARIZONA
10 DIALTONE, INC. TO ENFORCE ITS
11 INTERCONNECTION AGREEMENT

DOCKET NO. T-01051B-07-0694
T-03608A-07-0694

12 **PROPOSED PROTECTIVE ORDER**

13 The Arizona Corporation Commission Staff ("Staff"), Qwest Corporation ("Qwest"), and
14 Arizona Dialtone, Inc. ("AZDT") (collectively referred to herein as "the parties") intend to exchange,
15 or provide access to, and place into the record of this proceeding, certain information, some of which
16 may be claimed to be of a proprietary, confidential, or legally protected nature. The parties
17 respectfully request that the following agreement ("Agreement") be entered as an order of the
18 Commission in the above-captioned docket.

19 The parties agree as follows:

20 §1. **Non-Disclosure.** "Confidential Information" as used herein shall mean information,
21 which is claimed by a disclosing party to be of a proprietary, confidential, or legally protected nature.
22 Except with the prior consent of the party originally designating information as confidential, or as
23 hereinafter provided under this Agreement, no Confidential Information may be disclosed to any
24 person. This requirement does not prohibit the receiving party from using and disclosing Confidential
25 Information provided by a disclosing party in reports or documents that aggregate all information
26 gathered from the parties to this docket, provided that the disclosing party's individual disclosure is
27 indiscernible from the aggregate report.

28 §2. **Designation of Confidential Information.** Access to and review of Confidential
Information shall be strictly controlled by the terms of this Agreement.

1 All Confidential Information provided pursuant to this Agreement shall be so marked by
2 disclosing party with a designation indicating its alleged trade secret, proprietary, confidential, or
3 legally protected nature. The disclosing party shall memorialize in writing any Confidential
4 Information that it verbally discloses to a receiving party within five (5) business days of its verbal
5 disclosure, and the writing shall be marked by the disclosing party with the appropriate designation.
6 Any Confidential Information disclosed verbally by disclosing party shall be specifically identified as
7 confidential at the time of its verbal disclosure and shall be safeguarded by Staff and its contracting
8 consultants only during the five (5) business day period during which memorialization may be
9 provided. Disclosing party agrees that it will carefully consider the basis upon which any
10 information is claimed to be trade secret, proprietary, confidential, or otherwise legally protected.
11 Disclosing party shall designate as Confidential Information only such information as it may claim in
12 good faith to be legally protected. Where only a part of a document or only a part of an informational
13 submittal may reasonably be considered to be trade secret, proprietary, confidential, or otherwise
14 legally protected, Disclosing party shall designate only that part of such information submittal as
15 Confidential Information under this Agreement. Information that is publicly available from any other
16 source shall not be claimed as Confidential Information under this Agreement. While the receiving
17 party will honor the disclosing party's designation of documents or portions thereof as
18 "Confidential", mere designation of a document as "Confidential" does not mean that it is in fact or
19 in law confidential. As set forth in § 7 below, the receiving party shall have the right to challenge at
20 any time the disclosing party's designation of any document or portion thereof as "Confidential" in
21 accordance with the procedures described in this Agreement.

22 **§3. Performance Under Agreement Does Not Result in Waiver or Disclosure.**

23 Execution of this Agreement by the parties and performance of their obligations hereunder shall not
24 result in waiver of any claim, issue, or dispute concerning the trade secret, proprietary, confidential,
25 or legally protected nature of the Confidential Information provided. Neither the limited provision of
26 Confidential Information by disclosing party pursuant to this Agreement nor the limited provision by
27 receiving party of Confidential Information pursuant to §6 of this Agreement constitutes public
28 disclosure.

1 **§4. Access to Confidential Information.** Prior to reviewing any Confidential

2 Information, the receiving party (including, without limitation, any Commission Staff members or
3 independent contracting consultants) shall first be required to read a copy of this Protective
4 Agreement and to certify by their signatures on Exhibit A of this Agreement that they have reviewed
5 the same and have consented to be bound by its terms. Exhibit A of this Agreement shall contain the
6 signatory's full name, business address, employer, including in the case of disclosures to the Staff
7 the signatory's position with or relationship to the Arizona Corporation Commission
8 ("Commission"). Upon their execution, any and all Exhibits shall be promptly provided to counsel
9 for Disclosing party.

10 **§5. Use of Confidential Information.** All persons who are signatories to this Agreement
11 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
12 for any purposes other than those necessary for the disposition of this docket, including the
13 preparation for and conduct of any administrative or legal proceeding. All persons afforded access to
14 Confidential Information shall keep it secure as trade secret, confidential, or legally protected
15 information in accordance with the purposes and intent of this Agreement.

16 **§6. Non-Signatories Entitled to Review.** To the extent that disclosure is necessary to the
17 disposition of this docket, any Commission signatory to this Agreement may provide Confidential
18 Information under seal to the Commissioners and their Staffs, to other members of the Commission
19 Staff who are advising the Commissioners and their Staffs, or to any Commission administrative law
20 judge ("ALJ").

21 **§7. Disclosure of Information to the Public.** The Confidential Information provided
22 pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in
23 this docket, or in any other administrative or legal proceeding unless the party intending to do so
24 provides the disclosing party five (5) business days written notice that information designated by
25 disclosing party as Confidential Information shall be subject to disclosure as a public record. Upon
26 the expiration of five (5) business days from the date written notice is received by disclosing party,
27 any Confidential Information identified in the notice as subject to disclosure shall become part of the
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1 public record in this docket, unless disclosing party initiates a protective proceeding under the terms
2 of this Agreement.

3 **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
4 disclosing party seeks to prevent public disclosure of Confidential Information pursuant to §7 above,
5 disclosing party shall file within five (5) business days of receipt of Staff's written notice a motion
6 presenting the specific grounds upon which it claims that the Confidential Information should not be
7 disclosed or should not be made a part of the public record. Staff and other parties shall have an
8 opportunity to respond to the motion. Disclosing party's motion may be ruled upon by either the
9 Commission or an assigned Commission ALJ. Disclosing party may provide to the Commission or
10 the ALJ the Confidential Information referenced in the motion without waiver that the information
11 should remain confidential under the terms of this Agreement. Any Confidential Information so
12 provided shall be kept under seal for the purpose of permitting inspection by the Commission or the
13 ALJ prior to ruling on the motion.

14 Notwithstanding any determination by the ALJ or the Commission that any Confidential
15 Information provided pursuant to this Agreement should be made a part of the public record or
16 otherwise disclosed, public disclosure shall not occur for a period of five (5) calendar days so that
17 Disclosing party may seek judicial relief from the ALJ's or the Commission's decision. Upon
18 expiration of the five (5) day period, the Commission shall release the information to the public
19 unless Disclosing party has received a stay or determination from a court of competent jurisdiction
20 that the information is proprietary and is not a public record subject to disclosure under A.R.S. § 39-
21 101 et seq.

22 **§9. Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the
23 Commission, ALJ, or Staff determine that disclosure is not appropriate, the Disclosing party as the
24 real party in interest shall join as a co-defendant in any judicial action brought against the
25 Commission and/or Commissioners by the party seeking disclosure of the information, unless the
26 disclosing party is already specifically named in the action. Disclosing party also agrees to
27 indemnify and hold the Commission harmless from any assessment of expenses, attorneys' fees, or
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1 damages resulting from the Commission's denial of access to the information found to be non-
2 confidential.

3 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
4 request for documents, subpoena, civil investigative demand, or similar process) to disclose any of
5 the Confidential Information, the Commission shall provide disclosing party with prompt written
6 notice of such requirement so that disclosing party may seek an appropriate remedy and/or waive
7 compliance. Disclosing party agrees that, upon receipt of such notice, disclosing party will either
8 undertake to oppose disclosure of the Confidential Information or waive compliance with this
9 Agreement. In the event that disclosure of the Confidential Information is ordered, the Commission
10 agrees to furnish only that portion of the Confidential Information that is legally required.

11 **§10. No Preclusion of Evidentiary Objections.** The furnishing of any document, data,
12 study or other materials pursuant to this Agreement shall in no way limit the right of the providing
13 party to object to its relevance or admissibility in proceedings before this Commission. In the event
14 that public disclosure of Confidential Information occurs, the provision of such information by
15 disclosing party pursuant to this Agreement shall not limit the right of disclosing party to object to its
16 relevance or admissibility in proceedings before the Commission.

17 **§11. (a) Receipt into Evidence.** Provision is hereby made for receipt of Confidential
18 Information into evidence in this proceeding:

- 19 (1) Prior to the use of or substantive reference to any Confidential
20 Information the parties intending to use such Confidential Information shall
21 make that intention known to the providing party.
- 22 (2) The requesting party and the providing party shall make a good-faith
23 effort to reach an agreement so the Confidential Information can be used in a
24 manner which will not reveal its confidential or proprietary nature.
- 25 (3) If such efforts fail, the providing party shall separately identify which
26 portions, if any, of the documents to be offered or referenced shall be placed in
27 a sealed record.
- 28 (4) Only one (1) copy of the documents designated by the providing party to

1 be placed in a sealed record shall be made.

2 (5) The copy of the documents to be placed in the sealed record shall be
3 tendered by counsel for the providing party to the Commission, and maintained
4 in accordance with the terms of this Agreement.

5
6 (b) **Seal.** While in the custody of the Commission, materials containing
7 Confidential Information shall be marked "CONFIDENTIAL -- UNDER PROTECTIVE
8 AGREEMENT" IN DOCKET NOS. _ T-01051B-07-0694 and T-03608A-07-0694 " and shall not be
9 examined by any person except under the conditions set forth in this Agreement.

10 (c) **In Camera Hearing.** Any Confidential Information that must be orally
11 disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing,
12 attended only by persons authorized to have access to the information under this Agreement.
13 Similarly, any cross-examination on or substantive reference to Confidential Information or that
14 portion of the record containing Confidential Information or references thereto shall be received in an
15 in camera hearing, and shall be marked and treated as provided herein.

16 (d) **Access to Record.** Access to sealed testimony, records and information shall
17 be limited to the Administrative Law Judge, Commissioners, and their respective staffs, and persons
18 who are entitled to review Confidential Information pursuant to Section 4 above, unless such
19 information is released from the restrictions of this Agreement either through agreement of the parties
20 or after notice to the parties and hearing, pursuant to the ruling of a Administrative Law Judge, the
21 order of the Commission and/or final order of a court having final jurisdiction.

22 (e) **Appeal/Subsequent Proceedings.** Sealed portions of the record in the
23 proceedings may be forwarded to any court of competent jurisdiction for purposes of an appeal, but
24 under seal as designated herein for the information and use of the court. If a portion of the record is
25 forwarded to a court, the providing party shall be notified which portion of the sealed record has been
26 designated by the appealing party as necessary to the record on appeal.

1 **§12 Use of Confidential Information in Other Commission Dockets.** The parties agree

2 that the confidential information obtained in this docket shall not be used for purposes of any other
3 Commission dockets or other proceedings without the express consent of the providing party.

4 **§13. Return of Confidential Information.** Within ninety (90) days of the final disposition

5 of any administrative or legal proceeding arising in or from this docket, disclosing party shall submit
6 a written request for the return of all Confidential Information, copies thereof, and notes made by
7 signatories to this Agreement. If such a request is not received within the stated 90 days, receiving
8 parties shall destroy all Confidential Information, copies thereof, and notes made by signatories to
9 this Agreement, or return to disclosing party all Confidential Information, copies thereof, and notes
10 made by signatories to this Agreement, following written notice to disclosing party. Commission
11 Staff shall retain any Confidential Information provided in connection with such an informational
12 filing for whatever time period it deems appropriate.

13 **§14. No Admission of Privileged or Confidential Status.** By participating in this

14 Agreement, the receiving party, including without limitation Staff and its contracting consultants, are
15 neither admitting nor agreeing with disclosing party that any of the information designated as
16 Confidential Information is, either in fact or as a matter of law, a trade secret or of a proprietary,
17 confidential, or legally protected nature. The disclosing party shall have the burden of proof at all
18 times to demonstrate that any information it has designated as Confidential Information is either in
19 fact or as a matter of law, a trade secret or of a proprietary, confidential, or legally protected nature.

20 **§15. Breach of Agreement.** Disclosing party, in any legal action or complaint that it files

21 in any court alleging breach of this Agreement shall, at the written request of the Commission, name
22 the Arizona Corporation Commission as a Defendant therein.

23 **§16. Non-Termination.** The provisions of this Agreement shall not terminate at the

24 conclusion of this proceeding.
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DATED this _____ day of February 2008.

ARIZONA CORPORATION COMMISSION QWEST CORPORATION

By _____ By _____

Maureen A. Scott
Senior Staff Counsel, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Norman G. Curtright
20 East Thomas Road
16th Floor
Phoenix, AZ 85012
(602) 630-2187

Attorney for Arizona Corporation
Commission Staff Attorney for Qwest Corporation

ARIZONA DIALTONE, INC.

By: _____

Claudio E. Iannitelli, Esq.
Cheifetz, Iannitelli & Marcoline P.C.
1850 North Central Avenue, 19th Floor
Phoenix, Arizona 85004

Attorney for Arizona Dialtone, Inc.

EXHIBIT "A"

I have read the foregoing Protective Agreement dated _____, 2008, IN
**THE MATTER OF THE FORMAL COMPLAINT OF QWEST CORPORATION AGAINST
ARIZONA DIALTONE, INC. TO ENFORCE ITS INTERCONNECTION AGREEMENT,
DOCKET NO. T-01051B-07-0694, T-03608A-07-0694,** and agree to be bound by the terms and
conditions of such Agreement.

Name

Signature

Employer or Firm

Business Address

Position or relationship with the
Arizona Corporation Commission

Date

EXHIBIT B

Norman Curtright
Corporate Counsel
20 E. Thomas Road, 16th Floor
Phoenix, AZ 85012

602 630 2187 Direct
303 383 8484 Fax
norm.curtright@qwest.com



March 14, 2008

Sarah Harpring, Administrative Law Judge
Hearing Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington
Phoenix, AZ 85007

Re: In The Matter of the Formal Complaint of Qwest Corporation
Against Arizona Dialtone, Inc. to Enforce its Interconnection
Agreement
Docket Nos. T-03608A-07-0694, T-01051B-07-0694

Dear Administrative Law Judge Harpring:

As described in the attached Motion for Protective Order Qwest Corporation is filing today, Qwest hereby submits to you in the attached sealed envelope, marked "CONFIDENTIAL INFORMATION" an unredacted version of Exhibit D.

Qwest respectfully requests that pending a ruling on Qwest's Motion for Protective Order, that the Exhibit D submitted to you today remain under seal, and not open to the public.

Sincerely,

A handwritten signature in cursive script that reads 'Norman G. Curtright'. The signature is written in dark ink and is positioned above the printed name.

Norman G. Curtright

Enc.: CONFIDENTIAL EXHIBIT D

cc w/ enc.: Glenn Hotchkiss
Cheifetz, Iannitelli & Marcoline P.C.
1850 North Central Avenue, 19th Floor
Phoenix, Arizona 85004

cc w/o enc.: Maureen Scott, Esq.
Legal Division